

Honorable Kathryn H. Vratil's Stock Jury Instructions

DISCLAIMER

These stock instructions may change without further notice.

Counsel should be aware of any intervening changes in local rules or case law.

INSTRUCTION NO. __

MEMBERS OF THE JURY:

Now that you have heard the evidence, the time has come for the court to instruct you on the law governing this case. Although you, as jurors, are the sole judges of the facts, you are duty bound to follow the law stated in the instructions of the court and to apply the law so given to the facts as you find them from the evidence before you.

You should not single out any one instruction alone as stating the law in this case. Rather, you should construe each of the instructions in light of and in harmony with the other instructions, and you should apply the instructions as a whole to the evidence. The order in which the instructions are given has no significance and is no indication of their relative importance.

You are not to be concerned with the wisdom of any rule of law. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict on any view of the law other than that given in the court's instructions.

INSTRUCTION NO. __

You have been chosen and sworn as jurors in this case to try the issues of fact presented. You are to perform this duty without bias or prejudice as to any party. Our system of law does not permit jurors to be governed by sympathy, prejudice or public opinion.

In considering the evidence in this case, you are expected to use your good sense. Consider the evidence only for those purposes for which it has been admitted, and give it a reasonable and fair construction in light of your common knowledge and experience. However, you should not be influenced by anything not within the issues of this case. Both the parties and the public expect that you will carefully and impartially consider all of the evidence properly before you in the case, follow the law stated by the court and reach a just verdict, regardless of the consequences. Keep constantly in mind that it would be a violation of your sworn duty to base a verdict on anything but the evidence in the case.

INSTRUCTION NO. __

At times during the trial the court has ruled on objections to the admission of certain testimony or exhibits into evidence. Questions relating to the admissibility of evidence are solely questions of law for the court, and you must not concern yourselves with the reasons for its rulings. In your consideration of the case, you must draw no inference from these rulings, and you must consider only the evidence which has been admitted by the court.

Neither in these instructions, nor in any ruling, action or remark that I have made during the course of this trial, have I intended to express any opinion or suggestion as to how I would resolve any of the factual issues in this case.

INSTRUCTION NO. __

Generally speaking, there are two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence -- such as the testimony of an eyewitness. The other is indirect or circumstantial evidence -- the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

INSTRUCTION NO. __

During the trial of this case, certain testimony has been presented to you by way of deposition, consisting of sworn, recorded answers to questions asked of the witness in advance of the trial by one or more of the attorneys for the parties to the case. The testimony of a witness who, for some reason, cannot be present to testify from the witness stand may be presented in writing or by a videotaped recording in the form of a deposition taken under oath. Such testimony is entitled to the same consideration and is to be judged as to credibility, weighed and otherwise considered by the jury, insofar as possible, in the same way as if the witness had been present and had testified from the witness stand.

INSTRUCTION NO. __

The credibility of a witness may be attacked by evidence that on some prior occasion he or she made a statement, acted in a manner, testified in a deposition or answered an interrogatory inconsistently with his or her testimony in this case on a matter material to the issues.

You may consider evidence of this kind, in connection with all the other evidence, as evidence of the truth of what the witness said in his or her prior inconsistent statement. If you believe that any witness's testimony has been discredited, you may reject all or part of the testimony of that witness, and you may give the testimony such credibility as you think it deserves.

INSTRUCTION NO. __

The rules of evidence ordinarily do not permit witnesses to testify concerning opinions or conclusions as to which the witness does not have firsthand knowledge. An exception to this rule exists as to those whom we call “expert witnesses.” Witnesses who, by education and experience, have become expert in some art, science, profession or calling, may state an opinion as to relevant and material matter in which they profess to be expert and may also state their reasons for the opinion.

You should consider any expert opinion received in evidence in this case and give it such weight as you think it deserves. If you decide that the opinion of an expert is not based upon sufficient education or experience, or if you conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

INSTRUCTION NO. __

Statements and arguments of counsel are intended to help you understand the evidence and apply the law, but they are not evidence in the case unless made as admissions or stipulations of facts. When the attorneys for all parties stipulate or agree as to the existence of a fact, the jury must accept the stipulation as evidence and regard that fact as conclusively proved.

The evidence in the case consists of the sworn testimony of the witnesses, regardless of who called them; all exhibits which have been received in evidence, regardless of who produced them; and all facts which have been admitted or stipulated. Any evidence as to which an objection was sustained by the court and any evidence ordered stricken by the court must be entirely disregarded. Likewise, anything you may have heard or seen outside the courtroom is not evidence and must be entirely disregarded.

You are to consider only the evidence in the case. But in your consideration of the evidence you are not limited to the bald statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proven, such reasonable inferences as seem justified in the light of your experience.

INSTRUCTION NO. __

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

INSTRUCTION NO. __

Burden of proof means burden of persuasion, and is sometimes referred to as establishing something by a preponderance of the evidence. A party who has the burden of proof on any issue must persuade you that her claim or its claim is more probably true than not true. In determining whether a party has met this burden, you will consider all the evidence, whether produced by plaintiff or by defendant.

The weight of the evidence on any issue is not determined by the number of witnesses, but by how reasonable, persuasive and satisfying the evidence is to you.

INSTRUCTION NO. __

An injury or damage is proximately caused by an act or a failure to act whenever it appears from the evidence that the act or omission played a substantial part in bringing about or actually causing the injury or damage and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission.

This does not mean that the law recognizes only one proximate cause of an injury or damage, consisting of only one factor or thing or the conduct of only one person. On the contrary, many factors or things, or the conduct of two or more persons, may operate at the same time, either independently or together, to cause injury or damage; and in such a case, each may be a proximate cause.

INSTRUCTION NO. __

The fact that I have instructed you as to the proper measure of damage should not be considered as intimating any view of mine as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance in the event you should find in favor of plaintiff from a preponderance of the evidence in the case in accordance with the other instructions.

INSTRUCTION NO. __

You are the exclusive judges of the facts proven, the weight of the evidence and the credibility of the witnesses. In determining the issues in this case you will, of course, rely upon the evidence which you have heard in the courtroom and will not be swayed by sympathy, passion or prejudice. You may, and should, however, take into consideration and bring to your assistance the general information which you possess as to matters of common knowledge, observation and experience of life.

In weighing the testimony of the witnesses you have a right to consider their appearance and manner while testifying, their means of knowledge, apparent intelligence or ignorance, interest or want of interest in the outcome of the case and all other facts and circumstances appearing in the trial which will aid you in arriving at the truth. If you believe that any witness has wilfully testified falsely as to any material fact, you may disregard the whole or any part of his or her testimony, but you are not bound to believe or disbelieve all the testimony of any witness. Conflicting testimony, if any there be, should be reconciled with truthfulness, if reasonably possible, but if you cannot do so then you must use your best judgment in determining what testimony you will believe.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident may see or hear it differently, and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the

effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you may think it deserves.

INSTRUCTION NO. __

Your verdict in this case will consist of answers to certain questions set forth in the verdict form. Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

If you fail to reach a verdict, the parties may be put to the expense of another trial and will once again have to endure the mental and emotional strain of a trial. If the case is retried, a future jury must be selected in the same manner and from the same source as you have been chosen, and there is no reason to believe that the case would ever be submitted to a more competent jury. There also is no reason to believe that there will be more or clearer evidence produced at a future trial.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

You are not partisans. You are judges -- judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

INSTRUCTION NO. __

You are instructed that when you have retired to your jury room, you will first select one of your number to act as foreperson and to preside over your deliberations and to be your spokesperson to the court. When you have arrived at unanimous answers to the questions asked by the court, you will insert those answers in the verdict form and have the foreperson sign and date it. You should then inform the bailiff that you are ready to return a verdict.

If it becomes necessary during your deliberations to communicate with the court, you may send a written note by the bailiff. Bear in mind, however, that you are not to reveal to the court or to any person how the jury stands, numerically or otherwise, on the issues presented for your determination, until after you have reached a unanimous verdict. Of course your verdict must be in accordance with the instructions and the evidence you have heard.

UNITED STATES DISTRICT JUDGE